

# **Guidance: Documentation Requirements for Exemption Requests Under EPAct State and Fuel Provider Sections 490.308 and 490.204**

## **Background**

The Energy Policy Act of 1992 (EPAct) State and Fuel Provider rulemaking (10 CFR Part 490) was issued in March 1996, and implementation began in model year 1997. For the past two years, DOE has had experience evaluating exemption requests submitted by covered fleets. The following guidance was written to help covered fleets better understand how to file an exemption request with DOE, and instruct covered fleets on documentation that is needed for DOE to efficiently evaluate requests.

## **What are Exemptions and why are they addressed in the Energy Policy Act of 1992 (EPAct) State and Fuel Provider Rulemaking?**

Anticipating the possibility of incomplete availability of alternative fuel vehicles (AFVs) and alternative fuel, Congress provided that exemptions must be granted to both covered fuel providers (section 501(a)(5)) and State fleets (section 507(i)) if alternative fuels and/or AFVs that meet the normal requirements and practices of the fleet's principal business are not available. Alternative fuel must be available in the area in which the vehicles are to be operated. AFVs must be reasonable available for purchase or lease in the area in which the vehicles are to be operated.

DOE will consider a request for an exemption for one model year at a time only. To obtain exemptions, a fleet must provide sufficient documentation to back up its claims.

The following is a guidance that outlines the minimum documentation requirements to include when submitting a request for exemption to DOE. Note that DOE may ask for additional information in certain circumstances even if you submit all of the documentation requested in this guidance.

## **General Guidance For All Exemption Requests**

- Thoroughly read the information including the preamble discussion on exemptions provided in the rulemaking (10 CFR, Part 490), especially section 490.308 for fuel providers and section 490.204 for state agencies. It is available at [www.afdc.doe.gov/pdfs/fprovrule.pdf](http://www.afdc.doe.gov/pdfs/fprovrule.pdf). If you have any questions before submitting your request please contact DOE at (202) 586-9171 or email us at: [regulatory\\_info@afdc.nrel.gov](mailto:regulatory_info@afdc.nrel.gov).
- All exemption requests should be mailed in triplicate to:

**Program Manager**  
**Alternative Fuel Transportation Program, EE-2G/Forrestal Bldg.**  
**U.S. Department of Energy**  
**1000 Independence Avenue, S.W.**  
**Washington, D.C. 20585**  
**Phone: (202) 586-9171**  
**Fax: (202) 586-1610**

- File the request to DOE **as early as possible in but not before the beginning of the model year** for which you are seeking the exemption(s). It is your responsibility to meet the acquisition requirements on an annual basis under the EPA's State and Fuel Provider Rulemaking. Allowing proper lead-time will help you have ample time to acquire AFVs or credits during the model year if DOE denies your request. Lack of compliance after DOE rejects an exemption request could subject your fleet to enforcement actions by DOE.
- You must indicate for which model year the exemptions are being sought. DOE will only consider and respond to one specific model-year request at a time. You must resubmit your exemption requests annually.
- Make your request as clear as possible. Include the number of vehicles you are seeking to have exempted from the program, and on what grounds you are seeking the exemption (i.e. lack of alternative fuel and/or AFVs). You may do this in a cover letter with attachments containing back-up data and information.
- Make sure your cover letter clearly identifies a specific point-of-contact, a mailing address, phone number, fax number and email address so that DOE can contact you.
- Please use 8 ½ x 11" paper and include page numbers on your documents. If your exemption request submission is more than 10 pages, include a table of contents. A summary of the information and tables are often helpful to make sure the data is clearly documented.
- DOE has 45 working days to respond to your request for exemption. If the information you submit is insufficient for DOE to make a decision, you will be asked to submit additional information within 30 working days of the date on the notification DOE sends to you. Upon the receipt of your submission, DOE has another 45 working days to respond from the day the Department receives your request. To avoid delays in processing your request, **include all of the pertinent items listed in "General Documentation Requirements Checklist"** in addition to information from the other checklists provided to ensure that DOE has sufficient information to make a decision. If DOE has simple questions, a DOE representative may call you to clarify the documentation you submitted.
- Exemptions may be granted in whole or in part. When granting an exemption in part, DOE may, depending upon the circumstances, completely relieve a covered fleet from complying with a portion of the vehicle acquisition requirements for a model year, or it may require a covered fleet to acquire all or some of the exempted vehicles in future model years.
- If your request to DOE is beyond the scope of an exemption you may ask DOE for an interpretive ruling described under section 490.5 of 10 CFR Part 490.
- If DOE denies your request for exemption, you have another administrative option. Within 30 days of DOE's determination, you may file an appeal pursuant to 10 CFR Part 1003, subpart C, with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. If you file an appeal, the earlier DOE decision is stayed while the Office of Hearings and Appeals makes its ruling.

## General Documentation Requirements Checklist

The following is a checklist of information that normally will be required for DOE to begin consideration of any exemption request:

- ✓ Total number of light duty vehicles [ $\leq$ 8500 lb Gross Vehicle Weight Rating (GVWR)] by vehicle classification in your fleet
  - Light-duty pickup trucks\*
  - Light-duty vans\*
  - Passenger cars\*
  - Sports utility vehicles\*;
  
- ✓ Total number in each of the categories of light-duty vehicles listed above that were acquired or anticipated to be acquired for the model year for which you are requesting the exemption;
  - Light-duty pickup trucks\*
  - Light-duty vans\*
  - Passenger cars\*
  - Sports utility vehicles\*
  
- ✓ Total estimated number of AFVs or credit acquisitions needed to meet the requirements during the model year for which you requested the exemption(s)\*\*.
  
- ✓ Total AFVs or credits planned to be acquired during the model year.
  
- ✓ Total number of exemptions being requested.

**\* If you are seeking an exemption based on lack of a specific vehicle size or specification within a vehicle class, please provide more detailed information (i.e. compact, midsize or full size, etc. or 4x4 versus 4 x 2). Note that DOE will evaluate your fleet composition in making its decision on your compliance. DOE may find that even if you are granted exemptions for a certain class or classes of vehicle(s), DOE has the option to require you to increase your acquisitions within vehicle classes where OEM vehicles are available.**

**\*\*Note that DOE on June 24, 1999, issued an interim rulemaking covering credits issues for purchase of biodiesel. Look up [www.ott.doe.gov/documents/federal\\_register.shtml](http://www.ott.doe.gov/documents/federal_register.shtml) for more information on this new option for meeting your acquisition requirements. Guidance on how to report purchases of biodiesel is available at [www.ott.doe.gov/credits](http://www.ott.doe.gov/credits).**

## Exemption Requests Sought for Lack of Alternative Fuel Availability

Covered fleets submitting a request based on lack of availability of alternative fuel will need to provide the following:

- ✓ A listing with each exact location of your fleet vehicles including street address and zip code. DOE will also need documentation on the numbers and types of vehicles that are being acquired at each geographic location during the model year for which the exemption is being sought.
- ✓ A map of your service or operating territory is also helpful for DOE in making decisions related to refueling availability.
- ✓ You must include an assessment of all alternative fuel refueling options in your area.
- ✓ Maps with the distances to each refueling site from the facility where your vehicles are garaged or parked. These maps may be derived and printed using the map locator on DOE's websites at either [www.afdc.doe.gov](http://www.afdc.doe.gov) or [www.fleets.doe.gov](http://www.fleets.doe.gov). The refueling sections of each of these websites have software that will allow you to find alternative fuel refueling sites near your vehicle locations. You simply put in your address and zip code and the software will find stations nearest your location.
- ✓ You must include justification backing up your claims that fuel is not available to your fleet as a result of one or more of the following 1) distance from your vehicle location(s) (see map instructions above) 2) lack of station accessibility to your fleet 3) unreasonable amounts of time necessary to travel to refuel (you must include an assessment in minutes). DOE will take into consideration whether a refueling site is located in a rural, urban or suburban area.

**Note:** Accessibility to stations will be considered when granting exemptions. DOE may grant an exemption if nearby fueling stations have severely restricted access or hours. You must call the station and speak with someone and provide a contact and phone number to DOE if you wish to seek exemptions on grounds that stations are not accessible. Note that lack of 24-hour, 7-day per week refueling availability is not necessarily a reason for DOE to grant an exemption because bifuel and flexible fuel vehicles also have the capability to use gasoline when no alternative fuel is available.

- ✓ If you are seeking exemptions for vehicles outside metropolitan statistical areas (MSAs) included in Appendix A, subpart A of the Act, and you do not centrally refuel these vehicles, you may submit written justification as to why central refueling is incompatible with your business practices in these areas.

**Note:** While a good source of information, the DOE refueling site database does not contain information on every alternative fuel refueling station or option available to you. You are advised to check local resources such as your phone book, utility companies and other fuel suppliers to ensure that you have thoroughly examined your options.

## **Exemptions Sought for Lack of Available Alternative Fuel Vehicles**

The Energy Policy Act State and Fuel Provider rulemaking allows fleets to apply for exemptions because AFVs are not necessarily available for acquisition. Sometimes AFV models that a fleet normally acquires are not available from original equipment manufacturers (OEMs), thus limiting a fleet's choices. For DOE to consider an exemption request for lack of sufficient AFVs, a covered fleet must provide the following information:

- ✓ Types of light-duty vehicles required by your fleet (see general requirements checklist and if relevant include classifications such as 4 x 2, 4x4, mid-size, full-size or compact).
- ✓ Proof of lack of availability of the light-duty vehicle you need in an AFV model. (If dealers in your area do not offer AFVs, please include documentation from those dealers). If no original equipment manufacturer offers the type of vehicle for which you are seeking the exemption, please indicate this in your explanation.
- ✓ Proof that you historically use these vehicles as a normal business practice. You are asked to submit 3 years of documented proof that these vehicles are regularly acquired by your fleet.
- ✓ Justification of why the particular type or vehicle for which you are requesting this exemption is the only one that will meet your fleet's needs and an assessment of why current AFV models with similar characteristics do not meet your fleet's needs.